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FILED
2007 NOV 14 PM 3:34
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RM DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF THE STATE OF CALIFORNIA

GARY L. WHEELOCK,

Plaintiff,

v.

UNITED STATES OF AMERICA,
DOES 1-10, and ROE CORPORATIONS
1-10, INCLUSIVE

Defendant.

CASE NO. 07CV 2177 JM JMA

COMPLAINT FOR MEDICAL MALPRACTICE

1. This action arises under the Federal Tort Claims Act, 28 U.S.C. Section 1346 (b), as hereinafter more fully appears.

2. At all times mentioned herein, the Defendant United States of America and Does 1-10 and Roe Corporations, and each of them, were physicians, surgeons, nurses, medical technicians, medical administrative personnel, and health care facilities licensed by the Federal or State licensing agency to practice medicine and/or surgery in said State, and each such health care provider held himself, itself, or themselves out to possess that degree of skill, learning, ability and expertise possessed and exercised by similar medical practitioners and health care providers in the State of California.

3. At all times mentioned herein, the Defendants, Does 1-10 and Roe Corporations and each of them, were physicians, nurses, medical assistants, medical

technicians, medical administrative personnel, and health care facilities (including independent contractors whose identities are presently unknown) associated with or in the employ of Defendant United States of America, the Veteran's Administration, the medical associations or corporations, or hospitals, hereinabove referred to or in the alternative, were personnel unaffiliated with the Defendants hereinabove referred to and/or were independent contractors hired or retained by said fictitious Defendants, Does 1-10 and Roe Corporations 1-10, and/or named Defendant.

4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1-10 and Roe Corporations 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to insert their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately and legally caused by their conduct.

5. Plaintiff is informed and believes that at all times herein mentioned, each of the defendants was the agent and employee of each of the remaining defendants, and was at all times herein acting within the course and scope of said agency and employment, and each defendant has ratified and approved the acts of his or her agent.

6. The Defendants, and each of them, owed a duty to the Plaintiff, by providing professional health care in accordance with the applicable standard of health care prior to, during evaluation, and treatment of Plaintiff Gary L. Wheelock (based upon their respective medical specialities, and their respective health care standards).

7. Plaintiff Gary L. Wheelock is a citizen of the United States of America and presently resides at 2972 Lexington Circle, Carlsbad, CA 92010, within the jurisdiction of this court. The acts and omissions hereinafter alleged occurred within the Southern District of California. Accordingly, venue within this district is proper pursuant to 28 U.S.C. Section 1402.

8. Plaintiff alleges on information and belief that the Vista Satellite Clinic, the

Administrative Appointment and Follow Up System, and the Urology Department at Veteran's Administration Medical Center, employees, physicians, nurses, corpsmen or corpswomen and/or its staff are responsible for the matter at hand.

9. Plaintiff further alleges that Veteran's Administration Medical Center employed, supervised, and ratified the hiring of all employees and/or agents involved in Plaintiff's health care.

10. Plaintiff further alleges on information and belief, that Defendant United States of America and personnel at Veteran's Administration Medical Center and its employees and/or agents were acting in concert with the knowledge, consent and ratification of the Defendant at all times relevant to this action.

11. On or about late 1999 or early 2000, Plaintiff Gary L. Wheelock suffered an episode of diminished feeling in his pelvic area and blurry vision and presented to the emergency room at the V.A. Medical Center in La Jolla. The staff there told him he had no urgent problems, and was assigned to Dr. Robin Moyer in their Vista Clinic. Dr. Moyer sent Plaintiff Gary L. Wheelock on many occasions to the Urology Department for complaints of weak urinary stream, numbness in his genitalia, and low back pain. Dr. Moyer told Plaintiff Wheelock that she needed to rule out the most obvious cause, which was cancer, but no digital exams, PSA test or other appropriate specific diagnostic tests were performed, nor were there any imaging or follow up testing. Dr. Moyer diagnosed osteoporosis and perhaps stress. The Urology Department refused to see him, or failed to complete appropriate screening, physical examination, diagnostic testing, or follow up work.

12. Over the next few years, Plaintiff Gary L. Wheelock continued to present to V.A. Medical Center in La Jolla and the Vista Clinic with complaints of urinary problems including stream interruption, penile discharge, nocturia, burning upon ejaculation, and pain. Hip/pelvic x-rays and an MRI were done in 2004 and 2005, but no one identified the cancer. Finally, in December, 2006, Plaintiff Gary L. Wheelock presented to the Emergency Department and refused to leave without a diagnosis. Dr. Bennett ordered a

PSA test and the results were 970. Dr. Bennett, believing a mistake, ordered a second test. The result was over 1100. Plaintiff Gary L. Wheelock was admitted to the hospital and underwent CT scans of the abdomen, pelvis, and thorax, and a whole body scan. The results were Stage V metasticized cancer, that involved his prostate, lymph nodes, lungs, liver, thoracic vertebrae, and possibly his right shoulder. He was told that it was too far along to be treated with medication or to be surgically removed.

13. There was a professional health care relationship between Plaintiff Gary L. Wheelock and Defendants, and at said time and place, the Defendants, and each of them had a duty of care to practice medicine and provide health services as health care providers, medical technicians, surgeons, nurses, corpsmen, administrative medical staff, and medical facilities, using reasonable care.

14. Defendants' duty included the duty to properly examine, evaluate, diagnose, and treat Plaintiff Gary L. Wheelock. Defendants, and each of them, breached the duty of care owed to Plaintiff as health care providers by failing to exercise the proper degree of knowledge and skill in examination, evaluation, diagnosis, treatment, and therapy for Plaintiff, Gary L. Wheelock so that Plaintiff was caused to suffer the injuries and damages hereinafter alleged. Additionally, Defendant had a duty to exercise reasonable care in the training, management and control of its employees, agents and/or associates, and to institute and maintain and appropriate administrative system to ensure proper screening and follow up of their patients.

15. As a direct and proximate result of the negligence of the Defendant, Plaintiff Gary L. Wheelock suffered with an untreated and worsening condition, became depressed and disabled from his employment, and is now terminally ill with a short life expectancy. He is only 49 years old.

16. As a direct and proximate result of the negligence of the Defendant, Plaintiff Gary L. Wheelock's quality of life and work expectancy have been greatly lessened, and he is now facing a severely reduced life expectancy.

17. As a proximate result of said negligence of the Defendant, Plaintiff

Gary L. Wheelock was hurt and injured in health, strength, and activities, having sustained severe and lifetime injury to his internal system causing shock and injury to his person, all of which said injuries have caused and continue to cause Plaintiff great mental and physical suffering. Plaintiff is informed and believes and thereon alleges that said injuries have resulted in permanent disability and an imminent early death to Plaintiff Gary L. Wheelock.

18. As a further proximate result of negligence of the Defendant, Plaintiff Gary L. Wheelock was/is required to employ multiple physicians to examine, treat, and care for Plaintiff Gary L. Wheelock and did incur medical and incidental expenses. The exact amount of such expense is unknown to Plaintiff at this time and Plaintiff will ask leave to amend the pleading to set forth the exact amount thereof when the same is ascertained.

19. Plaintiff Gary L. Wheelock is informed and believes, and thereon alleges, that in the future he will necessarily, by reason of said injuries and damage, be required to obtain additional medical care and treatment and incur additional medical and incidental expenses to care for him in an assisted living, and then hospice care. Plaintiff does not know the reasonable value thereof and pray leave to amend this complaint to set forth the true amount of said losses when the same have been ascertained or will prove the same at the time of trial.

20. WHEREFORE, Plaintiff Gary L. Wheelock prays for judgment against the defendant and damage as follows:

(1) General damages according to proof;

(2) Special damages inclusive of current medical expenses, future medical expenses, lost earnings, lost earning capacity, loss of enjoyment of life;

(3) Pre-judgment interest;

(4) For costs of suit;

(5) For such other and further relief as this court may deem proper and necessary.

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Dated: 11-9-07

KATHRYN P. COONEY, Esq. 73322
THOMAS J. WATT, Esq. 144919
Attorneys for Plaintiff

JS44

(Rev. 07/89)

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED

2007 NOV 14 PM 3:36

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

**I (a) PLAINTIFFS**

Gary L. Wheelock

**DEFENDANTS**

The United States of America, Does 1-10, and Roe Corporations 1-10, inclusive.

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)**

San Diego

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)**

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Kathryn P. Cooney, Esq.
Law Offices of Kathryn P. Cooney
440 Escondido Avenue
Vista, CA 92084 (760) 941-2738

**ATTORNEYS (IF KNOWN)**

'07 CV 2177 JM JMA

**II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)**

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- X 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT**

| | PT | DEF | | PT | DEF |
|---|---|---|---|---|---|
| Citizen of This State | - | - | Incorporated or Principal Place of Business in This State | 4 | 4 |
| Citizen of Another State | 2 | 2 | Incorporated and Principal Place of Business in Another State | 5 | 5 |
| Citizen or Subject of a Foreign Country | 3 | 3 | Foreign Nation | 6 | 6 |

**IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).** Pursuant to Federal Tort Claims Act, 28 U.S.C. Section 1346(b). Medical Malpractice caused Plaintiff to suffer pain and suffering as well as permanent deformity. Plaintiff was severely injured when an employee of the US government neglected his care

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

**CONTRACT**
- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment &Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153Recovery of Overpayment of Veterans Benefits
- 160 Stockholders Suits
- 190 Other Contract
- 195 Contract Product Liability

**REAL PROPERTY**
- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Eiectmant
- 240 Tort to Land
- 245 Tort Product Liability
- 290 All Other Real Property

**TORTS**

**PERSONAL INJURY**
- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury

**PERSONAL INJURY**
- X 362 Personal Injury- Medical Malpractice
- 365 Personal Injury - Product Liability
- 368 Asbestos Personal Injury Product Liability

**PERSONAL PROPERTY**
- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

**CIVIL RIGHTS**
- 441 Voting
- 442 Employment
- 443 Housing/Accommodations
- 444 Welfare
- 440 Other Civil Rights

**PRISONER PETITIONS**
- 510 Motions to Vacate Sentence Habeas Corpus
- 530 General
- 535 Death Penalty
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prisoner Conditions

**FORFEITURE/PENALTY**
- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC881
- 630 Liquor Laws
- 640 RR & Truck
- 650 Airline Regs
- 660 Occupational Safety/Health
- 690 Other

**LABOR**
- 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- 730 Labor/Mgmt. Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation
- 791 Empl. Ret. Inc. Security Act

**BANKRUPTCY**
- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- 820 Copyrights
- 830 Patent
- 840 Trademark

**SOCIAL SECURITY**
- 861 HIA (13958)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS**
- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS - Third Party 26 USC 7609

**OTHER STATUTES**
- 400 State Reappointment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc.
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 810 Selective Service
- 850 Securities/Commodities Exchange
- 875 Customer Challenge 12 USC
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State
- 890 Other Statutory Actions

**VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)**

X 1 Original Proceeding | 2 Removal from State Court | 3 Remanded from Appelate Court | 4 Reinstated or Reopened | 5 Transferred from another district (specify) | 6 Multidistrict Litigation | 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND $ 2,000,000.00

Check YES only if demanded in complaint: JURY DEMAND: YES X NO

**VIII. RELATED CASE(S) IF ANY (See Instructions):** JUDGE Docket Number

DATE 11-9-07 SIGNATURE OF ATTORNEY OF RECORD

PAID $350 11/14/07 BH RCPT# 144513

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

**UNITED STATES**
**DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 144513 - BH**

**November 14, 2007**
**15:33:13**

**Civ Fil Non-Pris**
USAO #.: 07CV2177 CIVIL FILING
Judge..: JEFFREY T MILLER
Amount.: $350.00 CK
Check#.: BC#1207

**Total-> $350.00**

FROM: WHEELOCK V. USA
CIVIL FILING